



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2013-0377; FRL-9900-51-Region5]

**Approval and Promulgation of Air Quality Implementation Plans;
Indiana; Maintenance Plan Update for Lake County, Indiana for
Sulfur Dioxide**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a maintenance plan update for the Lake County, Indiana sulfur dioxide (SO₂) maintenance area. This plan update demonstrates that Lake County will maintain attainment of the 1971 SO₂ national ambient air quality standard (NAAQS) through 2025. This maintenance plan update satisfies section 175A of the Clean Air Act (Act), and is consistent with the September 26, 2005, approval of the State's redesignation request and maintenance plan for the Lake County, Indiana SO₂ area.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the

rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2013-0377, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela@epa.gov.
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R0-OAR-2013-0377. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the Background for This Action?
- II. What is the Current Air Quality in Lake County?
- III. What is EPA's Analysis of the State's Request?
- IV. What Action is EPA Taking?
- V. Statutory and Executive Order Reviews.

I. What is the Background for This Action?

On March 3, 1978 (43 FR 8962), EPA designated a portion of Lake County, Indiana as a primary nonattainment area for the 1971 SO₂ NAAQS under Section 107 of the Act. Indiana submitted a redesignation request and maintenance plan for the Lake County nonattainment area, which was subsequently redesignated to attainment by EPA on September 26, 2005 (70 FR 56129). As part of the maintenance plan, Indiana committed to submit an update to the Lake County SO₂ the maintenance plan eight years after the area was redesignated to attainment of the SO₂ standard. Indiana submitted a revision to the state implementation plan (SIP) for the 1971 SO₂ NAAQS maintenance plan update on March 28, 2013.

II. What is the Current Air Quality in Lake County?

There are two SO₂ monitors currently operating in Lake County, Indiana. Current air quality data shows a continued downward trend in SO₂, as shown in Table 1. The 1971 SO₂ NAAQS was not exceeded during the 2004-2011 timeframe.

Table 1. Lake County, IN SO₂ Monitoring Data 2004-2011 (ppm)

Site	Year	24 hour max (NAAQS=0.14)	3 hour max (NAAQS=0.5)	Annual Average (NAAQS=0.03)
Gary	2004	0.051	0.085	0.005
Gary	2005	0.050	0.165	0.004

Gary	2006	0.030	0.079	0.003
Gary	2007	0.022	0.071	0.003
Gary	2008	0.019	0.095	0.003
Gary	2009	0.020	0.057	0.002
Gary	2010	0.030	0.061	0.002
Gary	2011	0.024	0.060	0.002
Hammond	2004	0.022	0.038	0.004
Hammond	2005	0.017	0.045	0.003
Hammond	2006	0.016	0.029	0.004
Hammond	2007	0.022	0.048	0.005
Hammond	2008	0.011	0.029	0.004
Hammond	2009	0.009	0.035	0.003
Hammond	2010	0.012	0.024	0.002
Hammond	2011	0.012	0.029	0.003

III. What is EPA's Analysis of the State's Request?

Section 175A of the Act sets forth the required elements of a maintenance plan for the areas that are attaining the NAAQS. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will

continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future SO₂ violations.

The September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignations Areas to Attainment," provides additional guidance on the content of a maintenance plan. The memorandum states that an SO₂ maintenance plan should address the following items: the attainment emissions inventory, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

a. Attainment Inventory

Indiana developed a baseline emissions inventory for 2003, one of the years used to demonstrate monitored attainment of the 1971 SO₂ NAAQS. The attainment level of emissions is summarized in below:

Table 2. Lake County SO₂ Emissions (tons/year)

Source	Base year 2003	2011	2015	2025	Net Change 2003-2025
Point	33,101	24,308	17,880	17,459	-15,642

b. Demonstration of Maintenance

Indiana submitted revisions to the SO₂ SIP to include 12 year maintenance plans for Lake County area, in compliance with section 175A of the Act. This demonstration shows maintenance of the 1971 SO₂ NAAQS by assuring that current and future SO₂ emissions remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See Wall v. EPA, 265 F.3d 426 (6th Cir. 2001), Sierra Club v. EPA, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003).

Indiana is using projected inventories for the years 2015 and 2025 to demonstrate maintenance. These emission estimates are presented in Table 2.

The emission projections show that Indiana does not expect

Lake County emissions in the area to exceed the level of the 2003 attainment year inventory during the maintenance period. In the area, Indiana projects that SO₂ emissions will decrease by 15,642 tons/year for the maintenance period. The SIP submission demonstrates that the area will continue to maintain the standard.

c. Monitoring Network

Indiana currently operates two SO₂ monitors in Lake County, Indiana. Indiana has committed to continue operating and maintaining its approved Lake County SO₂ monitor network in accordance with 40 CFR part 58.

d. Verification of Continued Attainment

Continued attainment of the 1971 SO₂ NAAQS in the area depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. The state's plan for verifying continued attainment of the SO₂ standard in the area consists of plans to continue ambient SO₂ monitoring in accordance with the requirements of 40 CFR part 58. In addition, Indiana will periodically review and revise the SO₂ emissions inventory for the area, as required by the Consolidated Emissions Reporting Rule (40 CFR part 51), to track levels of emissions in the future.

e. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A(d) of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented.

Indiana updated their original contingency plan to ensure that it is consistent with the current inventory of SO₂ sources for the area. The contingency plan includes a two trigger levels for action based on monitored values. Indiana will continue to monitor SO₂ concentrations to determine whether trends indicate higher values or whether emissions appear to be increasing.

An initial Warning Level Response is triggered when 90% of the 1971 SO₂ NAAQS is reached. A study will be conducted at the Warning Level Response to determine if the emissions trends show increases. If the study shows that action is necessary to

reverse emissions increases, Indiana will follow the same procedures described below for control selection and implementation for the Action Level Response.

The Action Level Response will be prompted by a violation of the standard. If an Action Level Response is triggered, Indiana will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs.

Contingency measures will be considered based on those that are deemed appropriate and effective at the time of selection. Because SO₂ emissions are attributed primarily to point sources, the options available are limited to appropriate measures for the types of culpable sources. Indiana will undertake a study take to determine the source of the increased SO₂ concentrations. Although the point sources listed in the inventory will be the primary focus, the study will also encompass any other potential sources of SO₂.

The selection of measures will be based upon cost-effectiveness, emission reduction potential, and economic and social considerations or other factors that Indiana deems appropriate. A selected contingency measure can be initiated immediately in response to an action level response and should be in place within 18 months of the date of the violation. No

contingency measure will be implemented without providing the opportunity for full public participation during which the relative costs and benefits of individual measures, at the time they are under consideration, can be fully evaluated.

Adoption of any control measure is subject to administrative and legal approval. This includes an opportunity for public hearing and publication of notices on Indiana's website, as well as other measures required by Indiana law (IC 13-14-8-7) for rule making by Indiana environmental rule boards. This law provides accelerated procedures for adopting interim control measures in the event of an emergency affecting public health.

The SO₂ sources potentially subject to future controls are the same as the current list of sources, found in the maintenance plan. Sources subject to additional controls will be those which the study shows are responsible for triggering the contingency measures and the control of which will most effectively help to ensure compliance with the standards. In addition to reviewing the known sources, the possibility that the problem is attributable to new or previously unknown sources will be considered.

IV. What Action is EPA Taking?

EPA is approving a maintenance plan update for the Lake

County, Indiana SO₂ maintenance area. This plan update demonstrates that Lake County will maintain attainment of the 1971 SO₂ NAAQS through 2025. This maintenance plan update satisfies section 175A of the Act.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the

remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

V. Statutory and Executive Order Reviews.

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL

REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Sulfur
dioxide.

Dated: August 20, 2013.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. The table in § 52.770 paragraph (e) is amended by adding an entry in alphabetical order for "Lake County sulfur dioxide maintenance plan" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Indiana Nonregulatory and Quasi-Regulatory Provisions

Title	Indiana date	EPA approval	Explanation
* * *	* * *	* *	
Lake County sulfur dioxide maintenance plan	March 28, 2013	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	
* * *	* * *	* *	

3. Section 52.795 is amended by adding paragraph (i) to read as follows:

§ 52.795 Control strategy: Sulfur dioxide.

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(i) Approval -- On March 28, 2013 the State of Indiana submitted

a maintenance plan update for the Lake County, Indiana SO₂ maintenance area. This plan update demonstrates that Lake County will maintain attainment of the 1971 SO₂ NAAQS through 2025. This maintenance plan update satisfies section 175A of the Act.

[FR Doc. 2013-21274 Filed 08/30/2013 at 8:45 am; Publication Date: 09/03/2013]